

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

AF HOLDINGS LLC

Plaintiff

v.

MATTHEW BURNELL

Defendant.

Case No. 1:12-CV-01256

Hon. Gordon J. Quist

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**DEFENDANT'S BRIEF IN SUPPORT OF HIS MOTION TO STAY THIS
PROCEEDING**

I. INTRODUCTION

Defendant Matthew Burnell (“Mr. Burnell”) seeks a stay of this matter pending resolution of an Order to Show Cause in a separate, but highly relevant, proceeding in the Central District of California. The outcome of the California matter will have a direct impact on this matter. It is in the interest of judicial economy for this matter to be stayed.

II. FACT

Prenda Law, Inc. (<http://wefightpiracy.com/>), has filed hundreds of suits against individuals and mass “Does” asserting claims of copyright infringement and various alternative theories, all related to the alleged download and/or exchange of copyrighted material over open internet access systems or Wi-Fi systems. These cases name plaintiffs such as AF Holdings (as this case does) and Ingenuity 13 LLC. In many of these cases, the plaintiff retains local counsel, who appear on pleadings with their state bar number and address, but use the phone number and email address for Brett Gibbs, apparently in-house counsel for AF Holdings. Such is the case here, where Mr. Jonathan Tappan has appeared for Plaintiff, however lists his phone number as (415) 325-5900 (a California phone number) and his email address as blgibbs@wefightpiracy.com.

Numerous websites and blogs have focused on the litigation tactics of Prenda Law, AF Holdings, and Ingenuity 13. These sites include: <http://dietrolldie.com>, <http://fightcopyrighttrolls.com>, and <http://torrentlawyer.wordpress.com/>.¹

Mr. Burnell’s counsel has learned of a pending litigation matter in the Central District of California, Case No. 2:12-CV-08333-ODW-JC, *Ingenuity 13 LLC v John Doe* (“the California

¹ Specific articles of relevance to this matter appear at <http://abovethelaw.com/2013/02/judge-threatens-alleged-copyright-troll-with-jail-over-porn-complaints/> and <http://www.techdirt.com/articles/20121212/00354121354/copyright-troll-prenda-law-dances-around-simple-question-which-alan-cooper-runs-af-holdings.shtml> and <http://arstechnica.com/tech-policy/2012/12/man-charges-porn-trolling-firm-prenda-law-with-identity-theft/>. Copies of these articles are attached as *Exhibit E*.

case”). On February 7, 2012, the Hon. Otis D. Wright, II issued an Order to Show Cause re Sanctions for Rule 11 and Local Rule 83-3 Violations. ***Exhibit A***.

Of note in this Order, is the section entitled “Fraud on the Court” which begins on page 9. In the California matter, attorney Morgan E. Pietz has filed *ex parte* pleadings on behalf of the John Doe defendant(s). ***Exhibit B***. A primary issue is the identity of Alan Cooper, who is purportedly an officer of AF Holdings and Ingenuity 13, and has executed copyright assignments, which form the basis upon which Plaintiff files its cases. Invalid copyright assignments mean that Plaintiff has no standing in the California case, and in this case (the copyright assignment relied on by Plaintiff in this case is also executed by “Alan Cooper”). *See Complaint, its Exhibit A*.

In response to the Order, Mr. Gibbs and Mr. Pietz has each filed responsive pleadings, copies of which are attached as ***Exhibit C and D***, respectively. Mr. Gibbs notes in his declaration that he has not had face-to-face or direct interaction with AF Holdings. *Exhibit C, at ¶9*. Mr. Gibbs further notes that he has never met Alan Cooper and is unaware of Mr. Cooper’s role is in AF Holdings. *Id. at ¶11*. Additionally, Mr. Pietz notes that Alan Cooper has now filed a civil suit alleging misappropriation of his identity. *Exhibit D, at page 11*.

The Order to Show Case in the California case is set for hearing on March 11, 2013, at 1:30 p.m. Mr. Burnell respectfully requests that this matter be stayed pending the outcome of the hearing. If the court in the California case finds that the identity of Mr. Cooper has been misappropriated, the copyright assignment in this matter will be invalid and Mr. Burnell will move for dismissal of the case for lack of standing. The claims asserted against Mr. Burnell are virtually identical to those in the California case. Any lack of standing existing in the California case is equally applicable in this matter.

The stay requested by Mr. Burnell is short (essentially one month) as a hearing date has already been set in the California case. Good cause exists to see what happens with the same Plaintiff, making virtually the same claims, against a similarly-situated defendant, with a Court who is reviewing the sufficiency of Plaintiff's complaint, the standing upon which Plaintiff makes its claims, and propriety of Plaintiff's discovery tactics.

III. CONCLUSION

WHEREFORE, Defendant Matthew Burnell requests that this Court to grant his motion to stay this matter pending resolution of the Order to Show Cause in the California case.

Respectfully submitted,

Date: February 21, 2013

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